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No. 88-197

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

ITHACA INDUSTRIES, INC.,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Pursuant to Rule 22.5 of this Court's rules, the Petitioner, Ithaca Industries, Inc. ("Ithaca"), submits this Reply Brief in response to the brief of the Respondent Equal Employment Opportunity Commission ("EEOC").

The EEOC's Concession That The Fourth Circuit Accepted The District Court's Findings Of Fact Compels A Reversal Of The Fourth Circuit's Judgment

The EEOC states in its brief that "the court of appeals did not reject any of the district court's factual findings" (Res. 8). This is precisely the point which Ithaca stresses.

One of the findings of fact by the district court was as follows:

> The Court, therefore, finds that there was no way for the Defendant to accommodate Dean except to allow him every Sunday off and at the same time *require* all the other employees to work on Sunday at one time or another, when they were needed. (Pet. 32a) (emphasis added).

It is clear from the above quote that the district court found that Ithaca could not reasonably accommodate Dean without infringing on the rights of other employees (*i.e.*, without "requiring" them to work when they wanted to be off). As admitted by the EEOC, this crucial finding of fact has not been overturned. Therefore, the court of appeals was in error when it reversed the district court and ordered a religious preference for Mr. Dean. The granting of this petition for a writ of certiorari will enable this Court to correct an important misinterpretation of Title VII and Supreme Court precedent.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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